

OCT 10 2003

NOT FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON
U.S. COURT OF APPEALS**

STEVE S. ENZMINGER,

Plaintiff - Appellant,

v.

PACCAR FINANCIAL CORPORATION,

Defendant - Appellee.

No. 02-35722

D.C. No. CV-02-00040-RFC

MEMORANDUM*

Appeal from the United States District Court
for the District of Montana
Richard F. Cebull, District Judge, Presiding

Submitted October 8, 2003**
Seattle, Washington

Before: D.W. NELSON, KOZINSKI, and McKEOWN, Circuit Judges.

Steve Enzminger appeals the dismissal of his claim below on a Federal Rule of Civil Procedure 12(b)(6) motion to dismiss.

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Enzminger has not alleged facts that would give rise to a claim for promissory estoppel because the Revision Agreement superceded any prior or contemporaneous oral negotiations or stipulations that may have been made. *See* Mont. Code Ann. § 28-2-904. Moreover, Enzminger alleges no mistake or imperfection in the Revision Agreement, nor is the validity of the Revision Agreement in dispute. *See* Mont. Code. Ann. § 28-2-905(1).

The ruling of the district court is

AFFIRMED.